

AGRIPINO MENDOZA, PETITIONER AND APPELLEE, VS. PRIMITIVO KALAW, OBJECTOR AND APPELLANT.*G. R. No. 16420. October 12, 1921*

Ponente: JOHNSON, J.

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From the record it appears that on the 26th day of November, 1919, the petitioner presented a petition in the Court of First Instance of the City of Manila for the registration, under the Torrens system, of a piece or parcel of land, particularly described in paragraph A of the petition. The said lot is alleged to have an area of 371.6 square meters. The petitioner alleged that he was the owner in fee simple of said parcel of land for the reason that he had purchased the same of Federico Canet on the 8th day of November, 1919. Accompanying the petition, there was united a plan (marked Exhibit A) containing a technical description of the metes and bounds fo said parcel of land.

To the registration of said parcel of land the oppositor, Primitivo Kalaw, presented his opposition, alleging that he was the owner of the same and that he had acquired it from the said Federico Canet.

Upon the issue thus presented by the petition and opposition, the Honorable James A. Ostrand, on the 23d day of January, 1920, in a carefully prepared opinion, reached the conclusion that the petitioner was the owner in fee simple of said parcel of land, and ordered it registered in his name in accordance with the provisions of the Land Registration Act. From that decree the oppositor appealed to this court.

From an examination of the record the following facts seem to be proved by a large preponderance of the evidence :

- (1) That on the 24th day of September, 1919, the said Federico Canet sold, under a conditional sale, the parcel of land in question to the appellant (Exhibit 1) ;
- (2) That on the 8th day of November, 1919, the said Federico Canet made an absolute sale of said parcel of land to the petitioner Agripino Mendoza (Exhibit B);
- (3) That on the 12th day of November, 1919, Agripino Mendoza entered upon, and took actual possession of, said parcel of land, enclosed it with a fence, and began to clean the same;
- (4) That after the petitioner had fenced and cleaned said lot, as above indicated, a representative of the oppositor claimed and attempted to obtain possession of said lot, but the petitioner, who was then in possession, refused to deliver the possession, upon the ground that he was the owner;
- (5) That on the 17th day of November (18th day of November), 1919, the oppositor attempted to have his title registered in the registry of deeds of the City of Manila, but such registration was denied by the register of deeds for the reason that there existed some defect in the description of the property, and for the reason that the title of the vendor had not theretofore been registered. The register of deeds, however, did make an "anotacion

preventiva."

It will be noted from the foregoing that Federico Canet made two sales of the same property—one to the oppositor and the other to the petitioner. The first was but a conditional sale while the latter was an absolute sale. It will also be noted that while the absolute sale to the petitioner was subsequent to the conditional sale to the oppositor, the former obtained the actual possession of the property first. It will further be noted from a reading of Exhibits 1 and B that the petitioner actually paid to his vendor the purchase price of the property in question, while the payment by the oppositor depended upon the performance of certain conditions mentioned in the contract of sale.

While we have stated that there were two sales of the parcel of land in question, that is hardly the fact, because, a conditional sale, before the performance of the condition, it can hardly be said to be a sale of property, especially where the condition has not been performed or complied with. That being true, article 1473 of the Civil Code can hardly be said to be applicable.

Neither can the "anotacion preventiva" obtained by the oppositor be said to have created any advantage in his favor, for the reason that a preventative precautionary notice on the records of the registry of deeds only protects the rights of the person securing it for a period of thirty days. (Par. 2, art. 17, Mortgage Law.) A preventative precautionary notice only protects the interests and rights of the person who secures it against those who acquire an interest in the property subsequent thereto, and then, only for a period of thirty days. It cannot affect the rights or interests of persons who acquired an interest in the property theretofore. (Veguillas vs. Jaucian, 25 Phil., 315; Samson vs. Garcia and Ycalina, 34m Phil., 805.) In the present case the petitioner had acquired an absolute deed to the land in question, and had actually entered into the possession of the same, before the preventative precautionary notice was noted in the office of the registry of deeds. Therefore, under the provisions of the Mortgage Law above cited, it could in no way affect the rights or interests of persons, acquired theretofore.

For all of the foregoing reasons, we are fully persuade that the judgment ordering the registration of the parcel of land in question in the name of the petitioner should be and is hereby affirmed, with costs. So ordered.

Araullo, Street, Avancena, and Villamor, JJ., concur.

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